IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO. 179 and 180 OF 2007.

Writ Petition No. 179/2007.

M/s. West Coast Ingots Pvt. Ltd.,
a Company duly incorporated
under the provisions of the
Companies Act, 1956, having
its registered Office at Plot No.1,
Kundaim Industrial Estate,
Kundaim, Goa,
represented by its Authorised Representative,
Shri Dayanand Shenai. .... Petitioner.

Versus

1. Union of India,
   Through the Secretary,
   Ministry of Finance,
   New Delhi.

2. Commissioner of Customs and
   Central Excise, Goa,
   ICE Building, EDC Complext,
   Patto Plaza, Panaji, Goa.

3. Customs & Central Excise
   Settlement Commission,
   3rd Floor, Hotel Samrat,
   Kautilya Marg, Chanakyapuri,
   New Delhi. - 110 021. ....
   Respondents.

Writ Petition No. 180/2007.

M/s. Balaji Metals,
a duly registered Partnership Firm,
having its Office at Plot No. E-7,
Madkai Industrial Estate,
Madkai, Goa.
Represented by its Partner,
Smt. Kumud Mittal. .... Petitioner.

Versus.

1. Union of India,
   Through the Secretary,

Ministry of Finance,
New Delhi.

2. Commissioner of Customs and
Central Excise, Goa,
ICE Building, EDC Complext,
Patto Plaza, Panaji, Goa.

3. Customs & Central Excise
Settlement Commission,
3rd Floor, Hotel Samrat,
Kautilya Marg, Chanakyapuri,
New Delhi. - 110 021. ....
Respondents.

Mr. A. N.S. Nadkarni, Advocate for the Petitioners.

Mr. C.A. Ferreira, Assistant Solicitor General for the Respondents.

CORAM: S. A. BOBDE &
N.A. BRITTO, JJ.

DATE: 2nd APRIL, 2007.

ORAL JUDGMENT: (PER S.A. BOBDE, J.)

Rule. Rule returnable forthwith. Heard by consent.

2. The petitioners have challenged the Order of the Settlement Commission at Annexure "A" in both the petitions by which the Settlement Commission has granted immunity from interest in excess of 10% simple interest per annum i.e. the Commission has held the petitioners liable to pay interest to the extent of 10% per annum. The Settlement Commission has however granted full immunity from prosecution and penalty.

3. The basis of granting this immunity is the observation of the Commission that the petitioners have made out a case for grant of

immunity under Section 32K since they accepted and deposited the entire duty liability as pointed out in the show cause notice.

4. It is the contention of the petitioners in both the cases that the Order of the Commission which holds the petitioners liable to pay 10% interest on the duty, suffers from want of reasons, since the Order does not disclose why 10% interest was made payable. We are not impressed by the submission on behalf of the petitioners, since reading the order as a whole, it appears that the Commission levied 10% interest having regard to the manner of evasion of excise duty. The petitioners' expectations of detailed reasons may not be justified.

5. It was however contended by Mr. Nadkarni, the learned counsel for the petitioners that in the case of M/s Goa Ispat Ltd. which had filed a similar application, the Commission granted complete immunity from interest under Section 11A. The order granting immunity to M/s. Goa Ispat Ltd. is at Annexure “D Colly” in Writ Petition No.180/07. A reading of the order shows that in fact, though M/s. Goa Ispat Ltd. had admitted the facts and allegations in the show cause notice, they had failed to pay the entire duty liability, which the petitioners before us have in fact paid. Going by any standard of appraisal, one would have thought that the petitioners' case would have stood on a better footing, since they had accepted and paid the entire excise liability.

6. No explanation for this is forthcoming from the learned

Assistant Solicitor General, who appeared on behalf of the Revenue. We are conscious of the fact that absolute parity in such matters is neither desirable nor expected. However, the circumstances in which these cases have been decided show inexplicable non-application of mind which deserves interference.

7. In the circumstances of the matters, the impugned orders (Annexure “A”) in both the petitions are hereby set aside, to the extent it does not grant immunity from payment of excise duty under Section 11A. The matters are remanded back to the Settlement Commission for reconsidering the question of immunity from interest under Section 11AB and as may be appropriate only in regard to the settlement applications of the petitioners.

Rule disposed of accordingly.

S. A. BOBDE, J.

N. A. BRITTO, J.

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